

## **REMARKS**

### **I. Introduction**

Claims 1-3, 6-9 and 11-14 are pending in the present application after cancellation of claims 4, 5 and 10. Claims 1, 6-9 and 11 have been amended. For at least the reasons set forth below, Applicants respectfully submit that the claims are in condition for allowance.

Applicants note with appreciation the acknowledgement of the claim for foreign priority and the indication that all of the certified copies of the priority documents have been received.

### **II. Rejection of Claims 1-14 under Judicially Created Doctrine of Double Patenting**

Claims 1-14 are provisionally rejected under the judicially created doctrine of double patenting over claims 8-14 of co-pending U.S. patent application 10/496,434 and claims 11-20 of co-pending U.S. patent application 10/507,276. In order to facilitate expedited prosecution of the present application, Terminal Disclaimers under 37 C.F.R. § 1.321 (c) are being submitted to overcome the non-statutory double patenting rejections based on U.S. patent applications 10/496,434 and 10/767,087.

Claims 1-14 are rejected under the judicially created doctrine of double patenting over claims 1-14 of U.S. Patent No. 6,820,709 and claims 1-7 of U.S. Patent No. 6,853,903. In order to facilitate expedited prosecution of the present application, Terminal Disclaimers under 37 C.F.R. § 1.321 (c) are being submitted to overcome the non-statutory double patenting rejections based on U.S. Patent Nos. 6,820,709 and 6,853,903.

It is therefore respectfully submitted that the double-patenting rejections of claims 11-20 have been overcome.

### **III. Rejection of Claims 1-14 under 35 U.S.C. § 112**

Claims 1-14 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

In response to the Examiner's objections to claim 1, claim 1 has been amended to recite: a) "which operating modes can be activated in different speed ranges"; and b) "wherein a

change in a current operating mode which results in the loss of a speed-regulating function occurs solely via a command of the driver to the input device.” Previously recited “safety-relevant function” has been replaced with “a speed-regulating function.”

In response to the Examiner’s comments regarding claim 4, Applicants have canceled claim 4 and incorporated features of claim 4 into amended claim 1. Amended claim recites “wherein a first of the plurality of operating modes is an operating mode for a higher vehicle speed range that is activatable only above a limiting speed, and a second of the plurality of operating modes is for a lower vehicle speed range, and wherein an upper limit of the lower speed range is at least equal to the limiting speed and provides in certain instances an automatic braking of the vehicle to a standstill.” The above-recited limitation clearly indicates that there are two separate speed ranges which overlap at least at “the limiting speed.” In other words, the **lower limit of the higher speed range** is “the limiting speed,” and the **upper limit of the lower speed range** is at least equal to “the limiting speed,” which means the upper limit of the lower speed range may be higher than “the limiting speed.”

For the foregoing reasons, Applicants submit that claim 1 and its pending dependent claims 2-3, 6-9 and 11-14 are in compliance with 35 U.S.C. § 112, second paragraph.

#### **IV. Rejection of Claims 1-14 under 35 U.S.C. § 102(e)**

Claims 1-14 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,658,344 (“Hirasago”). Claims 4, 5 and 10 have been canceled. Applicants respectfully submit that Joyce fails to anticipate pending claims 1-3, 6-9 and 11-14, for the reasons explained below.

To anticipate a claim under § 102(e), a single prior art reference must identically disclose each and every claim element. See Lindeman Maschinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claim invention, arranged exactly as in the claim. Lindeman, 703 F.2d 1458 (Emphasis added). Additionally, not only must each of the claim limitations be identically disclosed, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the inventions of the rejected claims, as discussed above.

See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). To the extent that the Examiner may be relying on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Amended claim 1 recites, in relevant parts, “a plurality of operating modes differing in functional scope, which operating modes can be activated in different speed ranges, each operating mode having a corresponding number of speed-regulating functions, wherein a **change in a current operating mode which results in the loss of a speed-regulating function occurs solely via a command of the driver to the input device**; and a decision unit to determine . . . **whether a change in the desired speed input by the driver is to be interpreted as a command for changing the current operating mode**; . . . wherein the decision unit **deactivates the speed controller** when, in the second operating mode [for lower speed range], **the speed of the vehicle increases, and the driver does not input a new desired speed, while the actual speed of the vehicle lies within a predefined speed range.**”

While Hirasago does disclose multiple operating modes, in contrast to the above-recited claimed features Hirasago clearly fails to teach or suggest that these multiple operating modes are distinguished with regard to the scope/number of speed-regulating functions. In addition, Hirasago clearly does not suggest that different transitions between operating modes are distinguished as a function of the scope/number of speed-regulating functions, i.e., Hirasago does not teach or suggest that “a change in a current operating mode which results **in the loss of a speed-regulating function occurs solely via a command of the driver to the input device.**” Furthermore, nothing in Hirasago teaches or suggests that, in the event of a change of the desired speed input by the driver, the decision unit decides whether this change is to be interpreted as a change of the operating mode. Still further, Hirasago clearly does not teach or suggest that “the decision unit **deactivates the speed controller** when, in the second operating mode [for lower speed range], **the speed of the vehicle increases, and the driver does not input a new desired speed, while the actual speed of the vehicle lies within a predefined speed range.**”

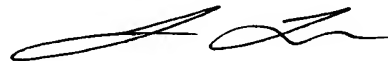
For the foregoing reasons, claim 1 and its dependent claims 2-3, 6-9 and 11-14 are not anticipated by Hirasago. Withdrawal of the anticipation rejection of pending claims 1-3, 6-9 and 11-14 is respectfully requested.

**CONCLUSION**

In view of the foregoing, it is submitted that claims 1-3, 6-9 and 11-14 are in allowable condition. It is therefore respectfully requested that the present application issue as early as possible.

Respectfully submitted,

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